

PARKING RAMP DEVELOPMENT AGREEMENT

THIS PARKING RAMP DEVELOPMENT AGREEMENT (the “Agreement”) is made as of September __, 2015, by and between the PORT AUTHORITY OF THE CITY OF BLOOMINGTON, a public body corporate and politic of the State of Minnesota (the “Authority”), and SOUTH LOOP INVESTMENTS, LLC, a Minnesota limited liability company (the “Developer”).

RECITALS

A. The Authority, the City of Bloomington, Minnesota (the “City”), and the Developer have entered into that certain Purchase and Development Agreement, dated December 10, 2014, as amended and supplemented by the First Amendment to Purchase and Development Agreement, dated September __, 2015 (collectively, the “Redevelopment Agreement”), relating to the development of certain land located in the City and legally described in EXHIBIT A attached to the Redevelopment Agreement (the “Development Property”).

B. Pursuant to the Redevelopment Agreement, the Authority agreed to convey the Development Property to the Developer, and the Developer agreed to undertake certain improvements to the Development Property to be completed in two phases as described and defined in the Redevelopment Agreement as the “Minimum Improvements,” including but not limited to the construction of a structured parking ramp on a portion of the Development Property (the “Parking Ramp Property”) with approximately 320 parking spaces with substantially the size, features, and standards specified in Exhibit F attached to the Redevelopment Agreement.

C. In accordance with the terms of the Redevelopment Agreement, the Authority will retain ownership of the Parking Ramp Property and the Parking Ramp, and the Developer will be provided a leasehold interest in the Parking Ramp Property and the Parking Ramp pursuant to the Parking Lease and Management Agreement, dated September __, 2015 (the “Parking Lease and Management Agreement”), between the City, the Authority, and the Developer.

D. The Authority and the Developer desire to provide for the terms and conditions of construction of the Parking Ramp by the Developer.

E. This Agreement is intended to be performed and interpreted in coordination with all of the agreements described above.

AGREEMENT

In consideration of the mutual representations, warranties, covenants and agreements set forth in this Agreement, the Authority and the Developer agree as follows:

ARTICLE 1. DEFINITIONS

Wherever used in this Agreement, the following terms have the meanings set forth below:

“Approved Plans” means the Plans approved pursuant to Section 2.2 and all Change Orders.

“Architect” means collectively, Ellness, Swenson & Graham Architects, Walker Parking Consultants, and Pausen & Clark.

“Authority” means the Port Authority of the City of Bloomington, or any successor or assign.

“Authority’s Agent” means the Authority Administrator, who is the person designated by the Authority as the agent of the Authority who is authorized by the Authority to approve all Plans, to observe the construction of the Work, to consult with the General Contractor’s contractor and representatives and the Architect with respect to the construction of the Work, and to execute written Change Orders on behalf of the Authority, or any successor or replacement of such person designated in writing by the Authority. The Authority’s Agent shall conclusively be deemed to be authorized by the Authority to execute Change Orders on behalf of the Authority, subject to the limitations set forth in Section 2.2.2(a).

“Authority’s Share of Project Costs” means the Public Assistance for the Project, as set forth in Section 2.4.

“Budget” means the budget for the Project, which includes the Contract Price, as well as all costs for development and design of the Parking Ramp, a copy of which is attached hereto as EXHIBIT B.

“Business Day” means any day that banks are open for business in Minneapolis, Minnesota.

“Certificate of Substantial Completion” means a Certificate of Substantial Completion in the form of EXHIBIT C issued by the Architect.

“Certificate of Occupancy” means governmental permission to operate the Parking Ramp for its approved use, even if subject to certain conditions or obligations, but not meaning a Certificate of Occupancy issued during the construction process for non-public use.

“Change Order” means a change order that modifies the Approved Plans, the schedule and/or the cost of Work that is approved in writing by the Developer and the Authority.

“City” means the City of Bloomington, Minnesota.

“Closing” means the date the Developer purchases the Parking Ramp Property from the Authority.

“Construction Contract” means the Standard Form of Agreement between Owner and Contractor entered into by the Developer and the General Contractor.

“Construction Records” means any and all documents which are necessary or appropriate to review the process and quality of construction and completion of the Work and which are in the possession of the General Contractor or are available to the Developer from the Architect or from the General Contractor’s contractors, engineers, or agents, wherever such documents may be located and whether or not actually located at the Project.

“Contract Price” means the cost to construct the Parking Ramp provided in the Construction Contract.

“Contracts” means all contracts, agreements, rights and documents pertaining to or encumbering or affecting all or part of the Project executed by the General Contractor, or to which the General Contractor is bound, and which do or with the passage of time will constitute an encumbrance on or limitation of the Project or the use thereof, and including all amendments thereto and modifications thereof.

“Developer” means South Loop Investments, LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“Developer’s Agent” means David Peters, the person designated by the Developer as the agent of the Developer who is authorized by the Developer to approve all Plans, to observe the construction of the Work, to consult with the General Contractor’s contractor and representatives and the Architect with respect to the construction of the Work, and to execute written Change Orders on behalf of the Developer, or any successor or replacement of such person designated in writing by the Developer. The Developer’s Agent shall conclusively be deemed to be authorized by the Developer to execute Change Orders on behalf of the Developer.

“Developer’s Share of Project Costs” means amounts, if any, required to pay Project Costs for Work that are in excess of the Public Assistance.

“Disbursing Agreement” means that certain Disbursing Agreement, dated September __, 2015, between the Authority, the Developer, and the disbursing agent named therein.

“Draw” means partial payments of the Project Costs made to the General Contractor from time to time pursuant to the Disbursing Agreement and this Agreement.

“Environmental Laws” means any federal, state or local laws, ordinances, codes, regulations, rules, policies and orders that are intended to protect the environment, or that classify, regulate, call for the remediation of, require reporting with respect to, or list or define, air, water, groundwater, or solid waste, hazardous or toxic substances, materials, wastes, pollutants or contaminants, or which are intended to provide for the safety of employees, workers or other persons, including the public.

“Final Completion” means final completion of the Work in accordance with the Approved Plans, including completion of all Punchlist Items.

“Force Majeure” means wars, terrorism, explosion, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, governmental action or inaction not reasonably anticipated, other acts of god, and other events beyond the General Contractor’s reasonable control.

“General Contractor” means Stahl Construction Company.

“Governmental Authorities” means all federal, state, county, municipal and local governments, administrative agencies, and quasi-governmental authorities having jurisdiction over the Project.

“Hazardous Materials” means any toxic or hazardous substance, material or waste, or any pollutant or contaminant, or infectious or radioactive substance or material defined in or regulated under any of the Environmental Laws.

“Impositions” means all real estate and personal property taxes, general and special assessments imposed by Governmental Authorities, water and sewer charges, and fees and charges assessed or imposed by Governmental Authorities upon all or part of the Project and which are or may become a lien on the Project or any part thereof.

“Land Use Restrictions” means all zoning, building, land use, subdivision, development, and laws which do or may regulate the occupancy, use, operation, development, sale, lease, encumbering, or management of the Project, all requirements of Governmental Authorities pursuant to such laws, and all

development and building permits issued by Governmental Authorities for the Project, and all approved development permits for the Project.

“Lender” means the entity or entities providing construction and/or permanent financing to the Developer for the Minimum Improvements and the Development Property.

“Legal Requirements” means all laws, ordinances, rules, regulations and requirements of all Governmental Authorities, including but not limited to Environmental Laws and Land Use Restrictions applicable to all or part of the Project or completion of the Work. Wherever it is provided herein that the General Contractor shall comply with “Legal Requirements,” however, such compliance shall not include applicability of laws, ordinances, rules, regulations and requirements relating to the use, operation, or manner of use of the Project after Substantial Completion.

“Materials” means all materials, supplies, chattels, fixtures, machinery, equipment or other articles of property furnished or to be furnished in connection with the construction of, and to be incorporated into, the Work.

“Parking Lease and Management Agreement” means the Parking Lease and Management Agreement between the Developer and the Authority, whereby the Authority leases the Parking Ramp Property and the Parking Ramp to the Developer and the Developer agrees to manage, operate, insure and maintain the Parking Ramp.

“Parking Ramp” means a structured parking ramp constructed on the Parking Ramp Property with approximately 320 parking spaces with substantially the size, features and standards specified on Exhibit F attached to the Redevelopment Agreement.

“Parking Ramp Property” means the real property upon which the Parking Ramp will be constructed, as described in EXHIBIT A attached hereto.

“Percentage of Project Completion” means the percentage of completion of Work as reasonably determined by the Architect, consistent with industry standards.

“Permits and Licenses” means all permits and licenses, variances, special use permits, business permits, sales tax permits, or any other permit or approval from a Governmental Authority related to the Work.

“Phase I Minimum Improvements” means the construction on: (i) the Phase I Property of an approximately 74,000 square foot hotel, including approximately 148 units, an approximately 2,000 square foot coffee shop, an approximately 9,500 square foot restaurant, approximately 81 surface parking spaces, and a public plaza area; and (ii) the Parking Ramp Property of the Parking Ramp.

“Plans” means all plans, design and construction drawings and specifications for construction and development of the Project, which are attached hereto as EXHIBIT D.

“Priced Punchlist” means the Punchlist together with the General Contractor’s estimate of the cost to complete or correct the Punchlist as approved by the Architect.

“Project” means the construction of the Parking Ramp, all as set forth in the Approved Plans.

“Project Costs” means all expenditures incurred or to be incurred for work, labor or Materials furnished in connection with the design, development and construction of the Work. Project Costs also

includes soft costs of the Project enumerated in the Budget, including costs of title disbursing services, costs of surveys, environmental assessments, development fees, appraisal fees, fees for zoning reports, governmental approvals and consultants' fees, including the Architect's fees.

"Public Assistance" means development funds transferred by the City to the Authority in the amount of up to \$5,749,739 to be disbursed by the Authority to either (i) pay the General Contractor for the Work; or (ii) reimburse the Developer for the Project.

"Punchlist" means the listing of each item of Work that is incomplete or which requires correction in order to conform to the Approved Plans. If the Certificate of Occupancy issued at the time of Substantial Completion is temporary or partial, the Punchlist shall include all Work needed to obtain a Certificate of Occupancy for the Project that is not temporary or partial, excluding any such work that is not included in the Project (such as hotel components).

"Punchlist Items" means items of Work included on the Punchlist from time to time.

"Redevelopment Agreement" means the Purchase and Redevelopment Contract, dated as of December 10, 2014 (the "Redevelopment Agreement"), between the Authority, the City, and the Developer, as it may be amended or supplemented from time to time.

"Request for Draw" means a statement of the Developer setting forth the amount of the Draw being requested and containing such other information as is required by Exhibit B of the Disbursing Agreement.

"Retainage" means a five percent (5%) retainage withheld on each Draw until Substantial Completion after which no retainage shall be withheld on interim payments.

"Subcontract" means any contract between the General Contractor and any person for the furnishing of work, labor or Materials in connection with the construction of the Project, as the same may be amended, modified or supplemented from time to time in compliance with this Agreement.

"Subcontractor" means a person who enters into any Subcontract.

"Substantial Completion" means and shall occur when:

- (i) The Architect has issued the Certificate of Substantial Completion for the Parking Ramp; and
- (ii) The Architect has approved the Priced Punchlist; and
- (iii) A Certificate of Occupancy has been issued for the Parking Ramp.

Substantial Completion and Final Completion relate to the Work only, and Substantial Completion and Final Completion may occur notwithstanding any incomplete items outside the scope of the Work. The Developer and the Authority each agree that it will not authorize or perform any other work on the Parking Ramp Property that may be subject to mechanic's liens during the term of this Agreement.

"Work" means the construction by the General Contractor of the Parking Ramp in conformance with the Approved Plans plus any other express obligations of the General Contractor hereunder.

ARTICLE 2. CONSTRUCTION OF PROJECT; CONSIDERATION

Section 2.1 **Completion of Work.**

Section 2.1.1 Commencement and Completion of Work.

(a) The Developer shall cause the General Contractor to construct and complete the Work to the point of Final Completion consistent with the time periods set forth in Section 5.3 of the Redevelopment Agreement.

(b) When the Developer believes that all requirements for Substantial Completion of the Project have occurred (except the issuance by the Architect of a Certificate of Substantial Completion and the Punchlist), the Architect and the Authority's construction monitoring consultant engineer shall inspect the Work to determine whether Substantial Completion has occurred and the Architect shall prepare the Punchlist. The determination of Substantial Completion shall be determined solely upon certification by the Architect. When the Architect has determined that Substantial Completion has occurred, the Architect shall issue a Certificate of Substantial Completion.

Section 2.2 **Preparation and Approval of Plans.**

Section 2.2.1 Architect; Independent Professional. The Architect has been engaged by the Developer. The Architect shall serve as an independent professional. All reports of the Architect will be delivered to Developer, the General Contractor, and the Authority. All certifications made by the Architect will be made jointly to General Contractor, the Authority, and the Developer.

Section 2.2.2 Plans and Change Orders.

(a) The Developer shall cause the Architect to prepare the Plans. The Authority's Board has approved the Plans through its approval of this Agreement. After delivery of any section of the Plans to the Authority's Agent and the Developer's Agent, the Authority's Agent and the Developer's Agent, respectively, shall provide written approval, comments or objections to such section of the Plans within ten (10) business days. If either party fails to provide any written response within such 10 day period, the proposal shall be deemed final. Any Plans or Change Orders approved by the Authority and the Developer will become part of the Approved Plans. If the Authority and the Developer do not approve any portion of the Plans or any Change Order, then such unapproved portion of the Plans or unapproved Change Order shall not become part of the Approved Plans. If the Authority and the Developer approve any portion of the Plans (and, if applicable, any related Change Order), then such portion of the Plans (and Change Order if applicable), shall become part of the Approved Plans.

(b) Certain changes to the Work may be ordered in accordance with the procedures set forth in the Construction Contract.

(c) In no event shall Change Orders increase the amount of the Authority's Share of Project Costs.

Section 2.3 **Retainages.**

Section 2.3.1 Retainage for Punchlist. The Authority shall withhold from the final payment of the Public Assistance at Substantial Completion an amount equal to one hundred twenty-five percent (125%) of the Priced Punchlist, which amount will be held by the Authority until the Architect certifies to the Authority that the Punchlist Items have been completed, and mechanic's lien claims for such completion have been waived in writing by the Subcontractors performing such Punchlist Items, whereupon the Authority shall pay the amount applicable to such items to the General Contractor. When all such Punchlist Items have been so certified and mechanic's lien claims waived, any remaining balance shall be paid to the General Contractor.

Section 2.3.2 Retainage for Mechanic's Liens. Except as provided in this Section and except for contractors, suppliers, vendor(s), or mechanics of the Developer or the Authority, the Developer shall cause the General Contractor to obtain and deliver to the Developer and the Authority for each Draw, mechanic's lien waivers in accordance with Section 2.4.5. In connection with any such waiver, a Subcontractor may condition such delivery upon the retainage by the Authority of certain funds, and the continued holding of such funds for delivery, in whole or in part, to the Subcontractor or as security for the Subcontractor's payment claims. The parties also acknowledge that one or more Subcontractors may refuse to supply such lien waiver. Such refusal shall not delay release of final retainage pursuant to Section 2.4.5 if the General Contractor obtains a bond under applicable law insuring over such potential mechanic lien or a court order releasing such lien from the Parking Ramp Property and the Parking Ramp in accordance with the law of the State of Minnesota. Such sum as to each Subcontractor shall be held in escrow by the disbursing agent under the Disbursing Agreement until the mechanic lien of such Subcontractor has been released by Court order pursuant to Legal Requirements.

Section 2.4 **Contract Price.**

Section 2.4.1 Contract Price. The Contract Price for development and construction of the Parking Ramp and the services provided by the General Contractor pursuant to the Construction Contract shall be \$5,410,695 as detailed in the Budget set forth in EXHIBIT B, which can be increased or decreased only by the following:

- (a) Written Change Orders complying with Section 2.2.2 that specifically reference an increase in the cost of Work or the Contract Price; and
- (b) Any increase in the cost of the Work resulting from a breach by the Authority of any of its obligations hereunder;
- (c) Any increase in the cost of the Work resulting from a breach by the Developer of any of its obligations under the Construction Contract or hereunder; and
- (d) Any other Contract Price adjustment provided for in this Agreement or under applicable law.

Section 2.4.2 Payment of Contract Price. The Authority shall pay the Contract Price and sums specified in the Budget up to the amount of the Authority's Share of Project Costs, subject to adjustments and prorations described herein, by monthly Draws made in accordance with the Disbursing Agreement. The Developer shall pay the remaining amount of the Contract Price (the Developer's Share of Project Costs).

Section 2.4.3 Disbursements of Draws. All draws for work related to the construction of the Parking Ramp shall be processed pursuant to the provisions of the Disbursing Agreement.

Section 2.4.4 Conditions to Draw of Retainage. Retainage, except Retainage pursuant to Sections 2.3.1 and 2.3.2, shall be released upon Substantial Completion. Notwithstanding the foregoing, prior to Substantial Completion, Retainage covering portions of the work which have been fully completed (including portions completed by the General Contractor) shall be released upon the written request of the General Contractor once such portions of the work for which the release of Retainage is requested have been completed and approved by Architect, the Authority's Agent, and the Developer's Agent.

Section 2.4.5 Conditions to Draw for Final Retainage. On or prior to the date of the Draw for the release of all Retainage, including Retainage for completion of the Punchlist Items, in addition to satisfaction of the conditions set forth in Section 2.4.4, the Authority and the Developer shall have received:

(a) Certificate. A certificate from the Architect and General Contractor stating that all Punchlist Items have been completed and installed in accordance with the Approved Plans and (to their actual knowledge), in accordance with all Legal Requirements.

(b) Release of Liens. Final and complete lien waivers signed by the General Contractor and all Subcontractors having mechanics lien rights, the release to the Authority of which is conditioned only upon the release to the General Contractor of the Retainage.

(c) Governmental Approvals. Evidence of approval by all Governmental Authorities whose approval is required of the completed Parking Ramp, the permanent occupancy thereof and the intended uses thereof.

ARTICLE 3. THE DEVELOPER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.1 **General**. In addition to the representations, warranties, and agreements set forth elsewhere in this Agreement, the Developer represents and warrants and agrees that the following facts and conditions exist on the date of execution hereof by the Developer and shall exist as of Substantial Completion. Each of the following warranties and representations shall be limited in scope to the subject matter of the warranty or representation as it relates to all or part of the Project or the existing or contemplated operations of the Project:

Section 3.1.1 Organization. The Developer is a Minnesota limited liability company authorized to conduct business in the State of Minnesota and has power and authority to own its properties and to transact the business in which it is engaged and has taken all necessary action to authorize the execution; delivery and performance of this Agreement and this Agreement constitutes a valid and binding obligation of the Developer.

Section 3.1.2 Authority. The Developer has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and no approvals or consents of any persons other than the Developer and the Authority are required in connection with this Agreement. The execution of this Agreement and consummation of the transactions contemplated hereby will not result in or constitute any default or event that, with notice or lapse

of time or both, would be a default, breach or violation of the organizational instruments or laws governing the Developer or any lease, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, or other agreement, instrument, or arrangement to which the Developer is a party or by which the Developer is a party or by which the Developer is bound.

Section 3.2 **Construction.** The Developer represents and warrants and agrees that it will work diligently to ensure that the following conditions exist as of Substantial Completion:

Section 3.2.1 Zoning and Land Use Matters. A Certificate of Occupancy for the Parking Ramp will be issued as provided in the definition of Substantial Completion, and all conditions of the Certificate of Occupancy, if any, applicable to permitting occupancy of the Project will be complied with.

Section 3.2.2 Health, Environmental and Fire Codes. The Work will be in compliance with all applicable fire codes, building codes, health codes, and other Legal Requirements which then apply to development and construction of the Parking Ramp.

Section 3.2.3 No Adverse Action. There will be no pending or threatened litigation to foreclose any mechanic's lien against the Parking Ramp, including, but not limited to, any mechanic's liens for work not included in the Work.

Section 3.2.4 Construction. Work will have been constructed in a good and workmanlike manner, with good and sufficient products and Materials, and in accordance with the Approved Plans and all applicable Legal Requirements, subject to the Punchlist, as evidenced by the Certificate of Substantial Completion.

Section 3.3 **Environmental Assessment.** The Authority previously reviewed and provided to the Developer a Phase I environmental assessment of the Parking Ramp Property and the Developer's lender also obtained a Phase I environmental report which the Developer has reviewed. Neither the Developer nor the Authority has any actual knowledge that such environmental assessments are incorrect in any material respect.

ARTICLE 4. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF AUTHORITY

Section 4.1 **Authority.** In addition to the representations, warranties, and agreements set forth elsewhere in this Agreement, the Authority represents and warrants and agrees that the following facts and conditions exist on the date of execution hereof by the Authority and shall exist as of Substantial Completion. Each of the following warranties and representations shall be limited in scope to the subject matter of the warranty or representation as it relates to all or part of the Project or the existing or contemplated operations of the Project:

Section 4.1.1 Organization. The Authority is a public body politic and corporate, organized under the laws of the State of Minnesota and has power and authority to transact the business in which it is engaged and has taken all necessary action to authorize the execution, delivery and performance of this Agreement and this Agreement constitutes a valid and binding obligation of the Authority.

Section 4.1.2 Authority. The Authority has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and no approvals or consents of any persons other than the Authority are required in connection with this Agreement.

The execution of this Agreement and consummation of the transactions contemplated hereby will not result in or constitute any default or event that, with notice or lapse of time or both, would be a default, breach or violation of the organizational instruments or laws governing the Authority or any lease, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, or other agreement, instrument, or arrangement to which the Authority is a party or by which the Authority is a party or by which the Authority is bound.

ARTICLE 5. OPERATIONS PRIOR TO COMPLETION

Section 5.1 **Insurance.** The Developer shall cause the General Contractor to maintain certain levels and types of insurance during the construction of the Parking Ramp, all as more fully described in Section 6.1 of the Redevelopment Agreement.

Section 5.2 **Inspections.** The Developer's Agent and the Authority's Agent shall be entitled to enter upon the Project and make inspections of the progress of the construction of the Work on a periodic basis as determined by the Developer and the Authority, respectively. The Developer's and the Authority's employees and accountants shall be entitled to review and inspect the Construction Records at any time. The Developer shall instruct the Architect to consult with the Developer's Agent and the Authority's Agent from time to time with respect to construction issues and interpretation of the Approved Plans. The Developer may designate more than one Developer's Agent for purposes of inspection, but only one designated Developer's Agent will be authorized to make decisions hereunder on behalf of the Developer. The Authority may designate more than one Authority's Agent for purposes of inspection but only one designated Authority's Agent will be authorized to make decisions hereunder on behalf of the Authority, subject to limitations on the Authority's Agent's actions as set forth in Section 2.2.2(a).

Section 5.3 **Taxes and Carrying Costs.** The Developer shall pay all Impositions and any other costs payable with respect to the Parking Ramp Property and Project thereon.

Section 5.4 **Payment and Performance Bonds.** The Developer shall cause the General Contractor to furnish two bonds; a payment and performance bond each in the amount of the full Contract Price, in favor of the Developer with the Authority listed as an additional obligee, and in compliance with State statutes to guarantee the faithful performance of the Construction Contract and the payment of all labor, mechanics, subcontractors and material. The performance bond shall cover a minimum period of one year after Final Completion, as respects faulty workmanship and Materials. The payment and performance bonds shall be furnished by a corporate surety company authorized to do business in the State of Minnesota and acceptable to the Authority. The payment and performance bonds shall be in the form of AIA 311 form. The AIA 312 form is not an acceptable alternative to the AIA 311.

ARTICLE 6. SUBSTANTIAL COMPLETION OF PROJECT

Section 6.1 **Developer's Deliveries.** At Substantial Completion, the Developer shall cause the General Contractor to execute and deliver the following to the Developer and the Authority in addition to those items set forth in the definition of Substantial Completion (collectively, the "Final Delivery Items"):

(a) A written confirmation by the General Contractor of its warranties and representations contained in the Construction Contract.

(b) The final Punchlist and the Priced Punchlist, together with the General Contractor's written agreement to work diligently to complete such Punchlist as soon as practicable after Substantial Completion.

(c) The Construction Records of the Work.

(d) All Contracts and Permits and Licenses executed or obtained by the General Contractor, if any.

Section 6.2 **Authority's Deliveries.** At Substantial Completion, the Authority shall deliver to the General Contractor the remainder of the Contract Price, as adjusted if necessary pursuant to this Agreement, and subject to Retainage pursuant to Sections 2.3.1 and 2.3.2, in immediately available funds.

ARTICLE 7. RISK OF LOSS

Section 7.1 **Notice of Casualty or Other Force Majeure Event.** The Developer shall give the Authority prompt written notice of any fire or other casualty or other Force Majeure event affecting all or any part of the Project occurring between the date of this Agreement and Substantial Completion.

Section 7.2 **Casualty.** If prior to Substantial Completion damage occurs to the Project caused by fire or other casualty or other Force Majeure event of any kind or nature, then the Developer shall cause the General Contractor to finalize the completion of the Work the same as if no such fire or other casualty or other Force Majeure event had occurred, provided (i) the deadline for Substantial Completion set forth in Section 5.3 of the Redevelopment Agreement shall be subject to extension, and (ii) the Authority shall remain obligated to pay the Authority's Share of Project Costs in accordance with this Agreement.

ARTICLE 8 EVENTS OF DEFAULT; REMEDIES

Section 8.1 **Events of Default.** It shall be an Event of Default if the Developer or the Authority commits any material breach of its respective obligations or representations hereunder as described below:

(a) A party commits a material breach of an obligation to pay any monetary sum due hereunder, and such failure continues for five (5) business days after written notice; or

(b) A party commits any other material breach of its obligations or representations hereunder and such breach continues for ten (10) days after written notice; provided, however, in the case of this clause (b) if such breach is not materially prejudicial to the other party and cannot reasonably be cured within ten (10) days, and within such ten (10) day period the breaching party commences cure and thereafter continues such cure in good faith and due diligence, then the breaching party shall have such additional time, not to exceed forty-five (45) additional days, as is reasonably necessary to cure.

Section 8.2 **Remedies.** The Authority's and the Developer's remedies upon an Event of Default shall include all remedies available at law, at equity or hereunder, including but not limited to specific performance of this Agreement; provided, however, that any cause of action for specific performance must be commenced within six months after discovery of the breach.

ARTICLE 9. MISCELLANEOUS PROVISIONS

Section 9.1 **Titles of Articles and Sections.** Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 9.2 **Entire Agreement; No Third Party Beneficiary, etc.** This Agreement, including all Exhibits and the Redevelopment Agreement contain the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and letters of intent, if any, with respect to the subject matter of this Agreement. The parties do not intend to confer any benefit on any person, firm or corporation other than the parties of this Agreement.

Section 9.3 **Amendments; Waivers; Extensions.** This Agreement may not be altered or amended, and no right under this Agreement may be waived, except by a written instrument executed by the parties (or, in the case of a waiver, by a written instrument executed by the party granting the waiver) to this Agreement or except as otherwise provided in this Agreement. No waiver of any breach of any agreement or provision contained in this Agreement shall be deemed a waiver of any preceding or succeeding breach of that agreement or provision or of any other agreement or provision contained in this Agreement. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

Section 9.4 **Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by any party to the others shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of Developer, is addressed to or delivered personally to Developer at 340 Main Street, Suite 200, P.O. Box 3208, Park City, UT 84060, Attn: David Peters, President; and

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at Bloomington Civic Plaza, 1800 West Old Shakopee Road, Bloomington, MN 55431, Attn: Administrator.

Section 9.5 **Fees and Expenses.** Each party shall pay its own expenses in connection with the transactions contemplated in this Agreement, including the fees and disbursements of its own legal counsel, accountants and other advisors in connection with the negotiation and preparation of this Agreement.

Section 9.6 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.7 **Exhibits.** All Exhibits referred to in and attached to this Agreement on execution are incorporated in and form a part of this Agreement as if fully set forth herein.

Section 9.8 **Governing Law.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Minnesota.

Section 9.9 **Assignment.** This Agreement shall be binding upon all successors, assigns, executors, administrators, other representatives, heirs or beneficiaries of the Authority and the Developer. No party hereto may assign its interest in this Agreement without the prior written consent of the other party.

Section 9.10 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement will not be affected, provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction contemplated hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable for either party.

Section 9.11 **Attorneys' Fees.** If any party employs an attorney to enforce any provision hereof or of any instrument or document delivered pursuant to this Agreement, or to protect its interest in any matter arising under this Agreement or any instrument or document given or delivered pursuant to this Agreement, or to recover damages for the breach of this Agreement or any instrument or document given or delivered pursuant to this Agreement or to seek specific performance of this Agreement, the nonprevailing party in any action pursued in court or in arbitration shall pay the prevailing party all reasonable costs, damages and expenses, including attorneys' fees and court costs and costs of discovery and paralegals and experts, expended or incurred by the prevailing party in connection therewith.

Section 9.12 **Waiver.** Any party hereto may specifically waive any breach of this Agreement by any other party, but no such waiver shall constitute a continuing waiver of similar or other breaches. A waiving party may at any time, upon notice given in writing to the breaching party, direct future compliance with the waived term or terms of this Agreement, in which event the breaching party shall comply as directed from such time forward. All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative and not mutually exclusive.

Section 9.13 **Venue.** Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 9.14 **Contingency.** The obligations of the parties under this Agreement are contingent upon "Phase I Closing" occurring as described in Section 3.3 of the Redevelopment Agreement, and upon such Phase I Closing as described in the Redevelopment Agreement, this contingency shall be automatically satisfied and of no further force or effect without further action of any party.

This Agreement has been executed by the Authority and the Developer on the dates below.

IN WITNESS WHEREOF, the Authority and the Developer have caused this Parking Ramp Development Agreement to be duly executed in their name and behalf on or as of the date first above written.

**PORT AUTHORITY OF THE CITY OF
BLOOMINGTON**

By _____
Robert Erickson
Its President

By _____
Schane Rudlang
Its Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of September 2015, by Robert Erickson, the President of the Authority of the City of Bloomington, a public body politic and corporate, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of September 2015, by Schane Rudlang, the Administrator of the Authority of the City of Bloomington, a public body politic and corporate, on behalf of the Authority.

Notary Public

Reviewed and approved by Port General Counsel.

Julie Eddington
Port General Counsel

Execution page of South Loop Investments, LLC to the Parking Ramp Development Agreement, dated as of the date and year first written above.

SOUTH LOOP INVESTMENTS, LLC

By _____
David Peters
Its _____

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of September, 2015, by David W. Peters, the _____ of South Loop Investments, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE DEVELOPMENT PROPERTY AND THE PARKING RAMP PROPERTY

Development Property

Parcel 1 (Hotel):

Lot 1, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

Parcel 2 (Restaurant, Coffee Shop, and Patio):

Lot 2, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

Parcel 3 (Market/Pharmacy):

Lot 3, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

Parcel 4 (Parking Structure):

Lot 4, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

Parking Ramp Property

Lot 4, Block 1, Lindau Link 2ND Addition according to the recorded plat thereof, Hennepin County, Minnesota.

EXHIBIT B

BUDGET FOR PARKING RAMP

Exhibit B

Alpha B Ramp Costs	Costs
Cat 2, Building Divisions 1-26	4,259,852
Cat 2, Site Costs	354,569
Cat 2, Soils Correction	101,224
Cat 2, General Conditions, Site	29,394
Cat 2, General Conditions, Building	149,969
Cat 2, GC Overhead/Profit	174,787
Cat 2, Contingency Site	28,400
Cat 2, Contingency	200,000
Cat 2, Owner Supplied Items	6,000
Cat 2, Indirect Construction Costs	71,260
Cat 2, Permits, Tap Fees, Impact Fees	58,240
Cat 3, Communications & Technology	26,000
Cat 7, Fees: Arch, MEP, Civil, Structural...	272,045
Soft costs	18,000
Total Costs	5,749,740

EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

**CERTIFICATE OF
SUBSTANTIAL COMPLETION**

PARKING RAMP PROJECT
(South Loop Investments, LLC)

AGREEMENT DATE: _____

TO:
[Developer]
[Port Authority of the City of Bloomington]

GENERAL CONTRACTOR:
[General Contractor]

Contact: _____
Phone: _____
Fax: _____

DATE OF ISSUANCE: _____

The "Work" as defined in the Parking Ramp Development Agreement, dated _____, 2015 (the "Parking Ramp Development Agreement"), between the Port Authority of the City of Bloomington and South Loop Investments, LLC has been inspected and found, to the Architect's best knowledge, information and belief, to be complete as follows: That stage in the progress of the Work has been achieved such that (i) the Work is in accordance with the "Approved Plans" as defined in the Parking Ramp Development Agreement subject to the Punchlist, (ii) Punchlist work does not prevent unrestricted occupancy by the Developer and its parking manager to commence employee staffing and preparation for opening of the Parking Ramp to the public of the quality established by the Approved Plans, and (iii) the Work is fully connected and serviced by all utilities. The date of this Substantial Completion is hereby established as _____.

A list of items to be completed or corrected and the estimated costs to complete or correct such items is attached hereto.

[Architect]

By _____
Its _____

Date

EXHIBIT D

PLANS

DRAWINGS

All plans sheets are dated July 7, 2015 and have been prepared by ESG Architects unless noted otherwise:

Plan sheets T1.1, T1.2, AC1.1, AC1.2, A1.1 through A1.4, A2.1, A3.1, A3.2, A4.1, A4.2, A5.1 through A5.3, A6.1, A7.1, A7.2, A11.1, A11.2, and A12.1;

Plan sheets C0.1, C1.2, C2.1 through C2.3, C3.1, C3.2, C4.1, C4.2, C8.1, and C8.2;

Plan sheet L01;

Plans sheets S-001, S-100 through S-102, S-502, and S-550;

Plan sheets AG101, AG102, AG601, and AG701;

Plan sheets M1.1 through M1.4, dated June 19, 2015; M2.1 through M2.4, dated July 1, 2015; M3.1, dated June 29, 2015; and M4.1, dated January 6, 2014;

Plan sheets E0.01 and E5.1, dated July 1, 2015; and E2.1 through E2.4, dated June 19, 2015.

SPECIFICATIONS

Project Manual, dated July 7, 2015, prepared by ESG Architects.